IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 538 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VG DHOBI - Petitioner(s)
Versus
TOWN PLANNING OFFICER & 2 - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR DA DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/04/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the letter dated 16-6-1997 and

directing the respondents to grant the higher grade scale to the petitioner w.e.f. 7-8-1993 instead of 1-7-1995 and to pay the arrears becoming due with interest.

2. Shri Supehia, learned advocate appearing on behalf of the petitioner does not press the relief in terms of para 11(AA) and restrict the present Special Civil Application with regard to grant of higher grade scale to the petitioner w.e.f. 7-8-1993.

3. It is the case of the petitioner in the present petition that he was appointed as a clerk-cum-typist in the office of the Deputy Collector, Kheda by order dated 6-8-1984 and thereafter, the services of the petitioner was transferred to the office of the Chief Town Planner on 26-4-1985. It is the case of the petitioner that even the services of the petitioner for the period between 6-8-1984 to 26-4-1985 was regularized pursuant to the order passed by the Chief Town Planner, Sate of Gujarat vide order dated 27-5-1987. It is the case on behalf of the petitioner that in spite of the above, when the benefit of first higher grade scale was to be given to the petitioner on completion of nine years, instead of considering the past service, the benefit of first higher grade scale on completion of nine years has been granted only w.e.f. 1-7-1995 instead of 7-8-1993 ignoring the past service of the petitioner between 6-8-1984 and 26-4-1985. Shri Supehia has relied upon two unreported decisions of this Court in the case of

Mulchandbhai Lavjibhai Patel and others V. State of Gujarat and others rendered in Special Civil Application No.10469 of 1999 and in the case of Jayesh Balashanker Dave V. State of Gujarat rendered in Special Civil Application No.8076 of 1995. He has submitted that even in the aforesaid cases, in spite of the fact that the employee was transferred on request and was put at the bottom of the seniority, still this Court has directed to consider the past service for the purpose of granting benefit of higher grade scale. Therefore, it is requested to allow the present Special Civil Application.

4. Shri DA Desai, learned AGP has appeared on behalf of the respondents. However, he is not in a position to dispute that the controversy raised in the present Special Civil Application is not covered by the decisions of this Court referred to hereinabove.

5. Heard the learned advocates appearing on behalf of the parties.

6. Identical question came to be considered by the learned Single Judge of this Court in Special Civil Application No.10469 of 1999 and relying upon two decisions of the Hon'ble Supreme Court, the learned Single Judge while allowing the said Special Civil Application held that the petitioners would be entitled to be considered for the grant of higher grade/scale by considering the total length of

serving by clubbing together the tenure of the pre-transfer and the post- transfer service in two districts, even if such transfers were on their own request. It is required to be noted that even the petitioner is on a better footings, as in the present case, the transfer was not on his own request. Thus, the centre of controversy in the present petition is completely covered by two decisions of this Court rendered in Special Civil Application Nos.10469 of 1999 and 8076 of 1995. Under the circumstances, the petitioner would be entitled to the grant of higher grade/scale by considering the total length of service by clubbing together the tenure of the pre-transfer and the post-transfer service in two districts.

7. For the reasons stated above, the petition succeeds. It is held that the petitioner would be entitled to grant of higher grade scale w.e.f. 7-8-1993 instead of 1-7-1995. The petitioner shall be entitled to the arrears becoming due while granting the benefit of higher grade scale w.e.f. 7-8-1993. Respondents are directed to complete the calculation within a period of six weeks from today and pay the the arrears becoming due to the petitioner within a period of six weeks thereafter. Rule is made absolute. No costs.

(M.R. Shah, J.)

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